STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF DEPARTMENT OF TRANSPORTATION GRIEVANCE NO. 2-2013:

BONNIE J. GUNDRUM, PLANNING DIVISION, ENVIRONMENTAL BUREAU, RESOURCES SECTION,	)	Case No. 65-2013
Grievant,	)	**FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**
vs.	)	
DEPARTMENT OF TRANSPORTATION,	)	
Defendant.	)	

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I. INTRODUCTION

In this matter, Grievant Bonnie Gundrum grieves Montana Department of Transportation's (MDT) decision to suspend her without pay for two days and its refusal to pay her for 3.5 hours of overtime. Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on October 12, 2012. David Gallik, attorney at law, represented Gundrum. David Ohler, Special Assistant Attorney General, represented MDT. The parties stipulated to the admission of grievant's Exhibits 0 through 4 and defendant's Exhibits A through W. Both parties submitted post-hearing briefs, the last of which was timely received on November 19, 2012. Having considered the evidence and argument presented by the parties, the hearing officer makes the following findings of fact, conclusions of law, and recommended decision.

II. ISSUES

1. Does the Board of Personnel Appeals have jurisdiction over Gundrum's grievance when she resigned her employment after the Step 3 hearing was held?

2. Is the issue regarding Gundrum's grievance with respect to payment for 3.5 hours of overtime properly before the Board of Personnel Appeals?

3. Was Gundrum aggrieved in a serious matter of her employment when she was suspended for two days for insubordination?

4. Was Gundrum aggrieved when MDT refused to pay her for 3.5 hours of overtime?

III. FINDINGS OF FACT

1. MDT employed Gundrum as a Resources Section Supervisor at all times material to this determination. Her position is classified as nonexempt. Gundrum's immediate supervisor was Tom Martin, Environmental Services Bureau Chief.

2. In January 2012, Martin issued Gundrum two oral warnings for insubordination. One of the oral warnings related to Gundrum's refusal to work with a co-employee, Jolyn Eggart. Gundrum had been earlier told (in December 2011) that Martin expected her to work with Eggart. Despite this, Gundrum refused to do so, telling Martin that she (Gundrum) was "fine with another black mark on my record." Martin also issued Gundrum an oral warning for refusing to implement Martin's directives regarding compensatory time and overtime within her section despite his direction to do so.

3. The Resources Section is responsible for interacting with other federal and state agencies regarding technical issues emanating from construction and maintenance of state roads and highways.

4. On April 26, 2012, Martin met with Gundrum during a weekly staff meeting to discuss the importance of her attendance at an upcoming meeting between the Resources Section and representatives of United States Fish and Wildlife Service (USFWA) and Federal Highway Administration (FHA) regarding borrow pit resources and the need for such resources to be cleared environmentally for endangered species. The meeting was scheduled to occur on May 2, 2012. Gundrum was, essentially, the key person at MDT to handle these types of meetings. Martin told Gundrum that there were important issues that were going to be discussed at the meeting and that she needed to attend.

5. Gundrum voiced concerns about a co-worker, Heidi Bruner, also attending the meeting. Martin told Gundrum that Bruner also had to attend the meeting. Gundrum told Martin that if Bruner attended the meeting she would not attend and that instead she would delegate her duties to a proxy. Martin told Gundrum in no uncertain terms "No, I need you there." Martin reasonably expected that Gundrum

would attend the meeting as Gundrum was the essential player to represent MDT's interest at the meeting.

6. Gundrum did not attend the meeting as she had been directed. Instead, on May 1, 2012 at approximately 5:57 p.m. in the afternoon, she e-mailed Martin and informed him that she would be taking vacation leave that morning. She told him further that she planned to make it in by noon. Martin could not have received the e-mail before the meeting took place and there was no reasonable likelihood that he would be notified prior to the meeting that Gundrum would not be attending the meeting as she had been directed. On May 2, 2012, Gundrum took 3.5 hours of vacation time.

7. Montana Operations Policy Manual Policy No. 03-0210 and MDT Policy Manual Policy No. 3-0210.1 state that "***As provided in Section 7 of the FLSA*** (Fair Labor Standards Act), employees in nonexempt positions will receive overtime compensation for all time in a pay status over 40 hours in a work week" and that such employees must be compensated at one and one half times their regular hourly compensation. Exhibit A, Part III A, page 2 (emphasis added). Generally speaking, under Section 7 of the FLSA, hours worked includes those times when an employee must be on duty or at the employer's premises or at any other prescribed place of work. Hours worked does not include vacation time.

Under Policy Manual Policy No. 03-0210 and MDT Policy No. 3-0210.1, "in a pay status" is defined as "[t]ime period in which an employee is being paid for hours worked or for annual [vacation] leave . . . ." Exhibit 4 and Exhibit A. The compensation policy also states that "When administering overtime or nonexempt compensatory time, agency management may . . . (c) adjust the work schedule of an employee in a nonexempt position for a workweek or require the employee to take time off without pay to prevent the employee from earning overtime compensation . . . ." Exhibit A, page 3, ¶4 (c).

8. On May 4, 2012, Gundrum turned in her time sheet for the two-week pay period ending that day. She signed her time sheet. On her time sheet, she claimed 40 hours of regular hourly pay, 2 hours of overtime, and 3.5 hours of vacation time for the first week of the pay period. She claimed 40 hours of regular time, 1.5 hours of overtime, and 4.5 hours of vacation time during the second week of the pay period. She did this because she understood her action to be appropriate under MDT Policy Manual Policy No. 3-0210.1. In addition, in the past when she had submitted time sheets under similar circumstances there had never been any issues. Testimony of Gundrum.

9. MDT has a "flex time" policy for nonexempt management employees. Under this policy, nonexempt management employees are only allowed to earn overtime pay if they work more than 40 hours during one week. Gundrum was or at least should have been aware of this policy. She was present at three supervisor meetings, one in 2009 and two in 2011, where the flex time policy and the requirement that it be followed was explained. Gundrum has not contested that it is in fact management's right to require that nonexempt employees flex their time in the circumstances that existed in this case.

10. Martin rejected Gundrum's time sheet because her claim for overtime did not comport with the management policy that overtime could not be claimed unless an employee actually worked in excess of 40 hours in one week. In an e-mail on Monday, May 7, 2012, Martin asked Gundrum to resubmit her time card and to request her pay in accordance with the oral policy regarding flex time.

11. As of Tuesday, May 8, 2012, Gundrum had not responded to Martin's May 7, 2012 e-mail. Martin told Gundrum in an e-mail that afternoon that he still needed an updated time sheet for the pay period ending May 4. Exhibit I. He further explained that she needed to flex her time as a management employee and that she should reduce the time she had taken as vacation leave time and count her hours only as regular hours.

12. Gundrum responded to Martin's e-mail, explaining in essence that she had always been paid time and a half for her overtime even if she had taken vacation leave as part of her 40-hour work week, that she had never been asked before to flex under these circumstances, and that she would not do so for the May 4 pay period. She thus refused to change her time sheet. Later during the afternoon of May 8th, Martin met with Gundrum and again explained the flex policy and directed her to sign the corrected time sheet. Gundrum refused to do so. Martin then asked her to reconsider and, again, she refused.

13. On May 9, 2012, Gundrum's time sheet input as she had originally submitted it (showing 3.5 hours of overtime) was overridden by Martin and corrected to comport with management flex time policy. This upset Gundrum and as a result she sent an e-mail to Brent Rabe, HR director at MDT, indicating that she was not happy that her time sheet had been overwritten such that she would not be getting overtime pay. Rabe responded back to Gundrum that he understood that Martin had discussed the necessity of changing the time sheet with her and that she had refused to do so. Rabe also explained that it was management's right to require non-bargaining unit employees to offset their hours and use flex time under the circumstances that existed in Gundrum's case for the pay period ending May 4, 2012.

14. Gundrum responded back to Rabe on May 9, 2012 that she would not resubmit her time sheet because she felt that her time reporting and her 3.5 hours of claimed overtime was consonant with MDT written policy. She stated specifically "I believe that any changes made to my time don't legally or accurately reflect my time." She then, again, unequivocally refused to make any changes or to sign her time sheet stating "I stand by my time as reported."

15. On May 10, 2012, Gundrum again effectively reiterated her refusal to sign her corrected time sheet in an e-mail sent to Rabe, Linda Hicks, and MDT Director Tim Reardon.

16. On May 16, 2012, Martin met with Gundrum to discuss her failure to attend the USFWA/FHA meeting and her failure to change her time sheet. Martin, understandably concerned about what appeared to be Gundrum's increasing recalcitrance to follow his directives in light of the January warnings, her unexplained failure to attend the May 2 meeting, and her refusal to sign a corrected time sheet, asked her to explain why she had failed to attend the meeting as directed. Gundrum refused to tell him why she was absent, other than to say that she had a time sensitive personal matter that precluded her being present at the meeting. Gundrum refused to give any further details about her absence.

17. On May 18, 2012, Martin sent an e-mail to Gundrum again directing her to sign her time card even though it had been changed to reflect the flex time mandated by the unwritten policy. He noted to her that while he understood that she had concerns about changing her time sheet, she could make notations on the time card and suggesting to her that she sign the time card so that she could be paid. Gundrum continued to refuse to sign the time sheet. The time sheet issue was not resolved until May 22, 2012 when Gundrum finally agreed to sign her corrected time sheet.

18. Gundrum's refusal to resubmit her pay card reflecting the changes requested by Martin resulted in a number of disruptions to other MDT personnel charged with timely processing pay requests. It was not until May 22, 2012 that Gundrum finally agreed to sign her corrected time sheet.

19. On June 6, 2012, Martin met with Gundrum and her attorney to discuss Gundrum's failure to attend the May 2, 2012 meeting. Martin understandably perceived Gundrum's refusal to attend the May 2, 2012 meeting as a desire to avoid attending a meeting with a co-employee whom Gundrum did not like. He also understandably perceived her failure to attend as yet another instance of insubordination, given the timing (during Martin's off duty hours) of sending an e-

mail to Martin saying she would be out of the office and Gundrum's refusal to explain what necessitated her sudden absence on May 2 other than to say that it was "a time sensitive personal matter."

20. Based on Gundrum's two incidents of insubordination in January, her steadfast refusal to sign the time sheet which had been corrected, and her failure to attend the May 2, 2012 meeting though specifically directed to do so, Martin imposed a disciplinary suspension of two days upon her. Exhibit E, letter to Gundrum entitled "Disciplinary Suspension Without Pay," dated June 6, 2012.

21. On June 18, 2012, Gundrum timely filed a grievance with MDT pursuant to Admin. R. Mont. 24.26.303. Her grievance was rejected at Step 1 and Step 2. She then timely requested that her grievance proceed to Step 3. On August 10, 2012, the board's investigator issued his Step 3 preliminary determination in this matter. In the decision, the investigator sustained Gundrum's grievance on the issue of the failure to pay her the 3.5 overtime hours of pay she sought from her May 4, 2012 pay period. The decision rejected her grievance regarding the imposition of her two-day suspension.

22. Gundrum timely rejected the preliminary decision with respect to the two-day suspension. She accepted the finding that upheld her grievance regarding the 3.5 hours of overtime she claimed to be due.

23. On August 15, 2012, MDT filed a document entitled "Notice Re: Preliminary Decision." In that notice, the MDT stated that it would accept the preliminary decision of the investigator with one caveat: "should the Grievant fail to accept the Preliminary Decision, the Department reserves the right to contest the Grievance in its entirety, including but not limited to the Investigator's preliminary decision regarding the issue of overtime compensation."

24. The hearing in this matter was held on October 12, 2012 and the evidentiary portion of the hearing concluded that day. The parties requested the opportunity to conduct post-hearing briefing on the case, which was permitted. On October 24, 2012, Gundrum left her employment with MDT, claiming that she had been constructively discharged.

IV. DECISION[1]

A. *The Board Of Personnel Appeals Has Jurisdiction Over This Grievance.*

The Department has moved to dismiss Gundrum's grievance arguing that her decision to leave her employment after the hearing in this matter had concluded but before the decision issued has rendered her grievance moot because she is no longer an employee of the Department. The grievant counters that because she was an employee at the time she commenced the grievance proceeding and the subject matter relates to an employment-related matter that occurred while she was employed by the Department, the grievance is properly before the Board of Personnel Appeals.

Admin. R. Mont. 24.26.303 permits an "employee" to "utilize the grievance procedure set out in this rule . . . ." Admin R. Mont. 24.26.303(5) defines an employee as "any person employed in the Montana Department of Transportation." Admin R. Mont. 24.26.303(6) defines an "employee grievance" as an employee's dissatisfaction concerning an employment-related matter based upon working conditions, supervision, or the result of administrative action except those arising from the Classification and Wage Act, . . ." Admin. R. Mont. 24.26.303(c) provides that "[i]f . . . an examiner appointed by the board presides over the [contested] case hearing, . . . the examiner, . . ., ***shall*** issue and cause to be served on the parties to the proceeding a proposed decision together with a recommended order, . . ." (Emphasis added).

Gundrum availed herself of this grievance proceeding while she was still employed with the Department. Indeed, she proceeded through all three steps of the grievance procedure outlined in Admin. R. Mont. 24.26.303 and was through the evidentiary portion of the contested case proceeding of Step 3 when she left her employment. By the plain language of 24.26.303(c), at this point in the proceeding, the hearing officer is constrained to issue the decision since the entirety of the matter, including the hearing officer presiding over the contested case, was presented for adjudication while Gundrum was an employee of the Department.

Beyond this, however, the case law that the hearing officer has identified suggests that if the grievance procedure is instituted while the grievant is still an employee, that is enough to confer jurisdiction. *See, e.g., State Development Office v. State Employees Appeals Board*, 363 A.2d 688 (Me. 1976) (holding that where statutory

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[1] Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

grievance procedure provided that employee could grieve his discharge and employee diligently pursued his grievance but where, prior to grievance reaching the appeals board, the employee had voluntarily retired, the appeals board nonetheless retained jurisdiction to adjust the employee's grievance regarding the discharge). In this case, no discernable policy would be served by finding that Gundrum's resignation after all steps of the grievance had been completed obviates the Board of Personnel Appeals' jurisdiction to resolve this case. Accordingly, in light of the plain language of Admin. R. Mont. 24.26.303 and the above identified case law, the Board of Personnel Appeals retains jurisdiction to adjudicate this grievance even though Gundrum resigned from her position.

B. *This Tribunal Has Jurisdiction To Consider The Entirety Of The Preliminary Decision*.

The grievant contends that the defendant failed to reject the portion of the preliminary decision that found that Gundrum should have been paid the 3.5 hours of overtime she sought. From this, the grievant argues that this tribunal has no subject matter jurisdiction to consider the propriety of that portion of the preliminary decision related to the payment of the overtime.

The defendant argues that the grievant's rejection of the preliminary decision puts the whole decision, including the issue of the overtime, before this tribunal for contested case hearing. The defendant sets out four bases upon which it argues that this tribunal can adjudicate the issue of the overtime pay dispute. This tribunal need only to consider the plain language of the rule to answer this question.[2]

An administrative tribunal has only that adjudicatory jurisdiction that is bestowed upon it by either statute or rule. *Montana Brd. of Natural Resources and Conservation v. Montana Power Co.*, (1975), 166 Mont. 522, 529, 536 P.2d 758, 762. The proper interpretation of an administrative rule is first to be determined from the language of the words contained in the rule. *State v. Incashola*, 1998 MT 84, ¶11, 289 Mont. 399, 961 P.2d 745, *citing Bean v. State Brd. of Labor Appeals*, (1995) 270 Mont. 253, 257, 891 P.2d 516, 518-19. Where that language is plain, a tribunal simply applies the words of the rule adding nothing to nor taking anything away from that plain language. *Insachola, supra.*

Admin. R. Mont. 24.26.303(b) sets out the subject matter jurisdiction of this tribunal with regard to the preliminary decision. The rule refers only to the

[2] By deciding this issue based on the plain language of the rule, as argued by the defendant in its first argument, this tribunal makes no decision regarding the remaining three arguments posited by the defendant.

preliminary decision. It states unequivocally that a party may reject or accept the preliminary decision. As MDT correctly notes in its post-hearing brief, there is no provision for rejecting only a portion of the preliminary decision. Once the preliminary decision has been rejected by either party, the entirety of that decision goes before the Board or a designated hearing officer according to the Montana Administrative Procedure Act (MAPA). Under MAPA, a contested case hearing must provide "***all*** parties" an opportunity to present evidence and argument "on ***all*** issues involved." Mont. Code Ann. § 2-4-612(1) (emphasis added). Nothing in Admin. R. Mont. 24.26.303(b) limits consideration to only a portion of the preliminary decision. Under the plain language of the rule, because the grievant rejected the preliminary decision, the entirety of the decision, including the question of the propriety of the overtime, is properly before the Board of Personnel Appeals.

C. *Standards Applicable To Adjudication Of Grievances.*

An MDT employee aggrieved by a serious matter of employment based upon work conditions, supervision, or the result of an administrative action is entitled to a hearing before the Board of Personnel Appeals. Mont. Code Ann. § 2-18-1001. The burden is upon the employee to show by a preponderance of the evidence that she has been aggrieved. Mont. Code Ann. § 2-18-1012.

Admin. R. Mont. 2.21.6506 provides in pertinent part:

> (1) It is the policy of the state of Montana that:
> (a) state employees who fail to perform their jobs in a satisfactory manner or whose behavior otherwise interferes with or disrupts agency operations be subject to disciplinary action, up to and including discharge;
> (b) disciplinary action be administered for just cause, as defined in this policy; and
> (c) an employee be informed of the cause for disciplinary action and offered the opportunity to respond.

Admin. R. Mont. 2.21.6507(8) defines "just cause" as follows:

> [R]easonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties, or disruption of agency operations. Just cause may include, but is not limited to: an actual violation of an established agency standard, procedure, legitimate order, policy, or labor agreement; failure to meet applicable professional standards; criminal misconduct; wrongful discrimination; deliberate

misconduct; negligence; deliberately providing false information on an employment application; willful damage to public or private property; workplace violence or intimidation; harassment; unprofessional or inappropriate behavior; or a series of lesser violations.

The inquiry in a grievance proceeding such as this is limited to determining whether the agency abused its discretion in making the decision. *State Board of Personnel Appeals v. Montana Dep't of Highway*, 189 Mont. 185, 189, 615 P.2d 844, 845 (1980) (finding that the Board of Personnel Appeals' determination under the auspices Mont. Code Ann. § 2-18-1012 to reverse a hiring decision by the highway department was in error where the Board substituted its judgment regarding the propriety of a hiring decision instead of limiting its review to determining whether the hiring decision amounted to an abuse of discretion).

D. *Just Cause Existed To Impose The Two-Day Suspension.*

Insubordination is an intentional refusal to obey a direct or implied order reasonable in nature and given by and with proper authority. *Wolny v. City of Bozeman*, 2001 MT 166, ¶32, 306 Mont. 137, 30 P.3d 1085. Insubordinate conduct includes refusing to answer questions reasonably related to an employee's job performance and failing to attend meetings. *Wolny*, ¶33. In addition, an employee is obligated to obey a reasonable instruction from his employer even if the employee disagrees with the instruction. *See, e.g.*, *Crider v. Spectralite Consortium, Inc.*, 130 F.3d 1238, 1242 (7th Cir., 1997). And neither party in this matter disputes the black letter law principle that an employee must "obey now and grieve later" those directives which are reasonable, even if they ultimately turn out to be wrong. *Crider, supra.*

Martin imposed the two-day suspension on Gundrum because of her insubordination manifested through her refusal to attend the USFWS and FHA meeting, her two oral warnings in January 2012, and her obstinate refusal to sign her corrected time sheet. Martin's directives in each of these situations were reasonable. Gundrum's conduct demonstrated insubordination. Her refusal to attend meetings or work with co-workers was obviously disruptive to the orderly process of work in Gundrum's section. Her refusal to sign her time sheet not only was insubordinate but resulted in disruption to the agency as demonstrated through Martin's testimony.

Gundrum's only defense to this last point is that the policy requiring the use of flex time was not consistent with the written policy contained in the manual. The hearing officer does not agree with that argument. First, Gundrum's argument completely ignores the prefatory language contained in Montana Operations Policy

Manual Policy No. 03-0210 III A which plainly states that overtime compensation is subject to the requirements of Section 7 of the FLSA. That language makes it plain that overtime compensation is not due to a nonexempt employee until that person has exceeded 40 hours of ***work*** time, i.e., hours on duty or at the employer's premises or at any other prescribed place of work.

Second, even if the flex time policy were not consistent with Montana Operations Policy Manual Policy No. 03-0210 and MDT Policy Manual Policy No. 3-0210.1, that inconsistency would not eviscerate the reasonableness of Martin's order that Gundrum provide a corrected time sheet. MDT was faced with additional burdens upon payroll due to Gundrum's failure to sign her time sheet. Indeed, Gundrum was specifically apprised that the administration understood her position on the issue and that by signing her corrected time sheet she would not be forfeiting any right to grieve or adjust an incorrect decision to not pay her at an overtime rate for 3.5 hours of work. Despite all of this prodding, Gundrum continued to refuse to resubmit her time sheet. Gundrum's failure to do so, under the circumstances of this case, is a textbook example of an indefensible failure to follow a reasonable directive from a supervisor.

Given the number of instances of insubordination and the proximity in time during which they occurred (within a four-month period between January 2012 and May 2012), the hearing officer cannot say that Martin's imposition of a two-day suspension was unwarranted. Therefore, Gundrum's grievance with regard to the two-day suspension cannot be sustained as she has failed to demonstrate preponderantly that she was aggrieved by the suspension.

E. *Gundrum Has Been Aggrieved By MDT's Failure To Pay Her 3.5 Hours Of Overtime During The May 4, 2012 Pay Period.*

The preliminary Step 3 decision in this matter determined that Gundrum had been aggrieved by MDT's failure to pay her the 3.5 hours of overtime she sought for the May 4, 2012 pay period. MDT rejected this decision and contends that it was not required to pay Gundrum any overtime during the two-week pay period ending May 4, 2012.

MDT did not challenge Gundrum's contention that she had submitted her time sheets for several years in a manner similar to the way that she submitted her May 4, 2012 time sheet and her previous time sheet submissions apparently had not been questioned. In fact, MDT has not articulated in any of its closing briefing why the preliminary determination finding that the 3.5 hours of overtime should be paid was incorrect. In light of what appeared to be the past practice of MDT with this

employee's submittal of time sheets (i.e., permitting Gundrum to claim overtime hours even though she also claimed vacation time during the same pay period), it is reasonable to sustain Gundrum's grievance with respect to not being paid for the 3.5 hours of overtime.

F. *Other Relief Sought By Gundrum*.

Gundrum's request for relief filed on October 5, 2012 contains requests that neither party addressed in post-hearing briefing but which the hearing officer feels compelled to address in this recommended decision. Gundrum requests that her attorney's fees be paid and that the MDT develop "a clear policy with regard to submittal of time sheets containing various types of in pay status hours." Page 2. Turning first to the attorney's fees, this tribunal has no power to award such fees as the Board of Personnel Appeals has recognized. An administrative tribunal, unlike the Montana district courts, is a forum of limited jurisdiction, with only those powers specifically granted to it by the legislature. *Auto Parts of Bozeman v. Emp. Rel. Div. U.E.F.*, ¶ 38, 2001 MT 72, 305 Mont. 40, 23 P.3d 193. Montana administrative tribunals cannot award attorney's fees to successful parties in the absence of either contractual or specific statutory authorization. *Thornton v. Comm. of Labor & Industry* (1981), 190 Mont. 442, 621 P.2d 1062. In conformity with *Thornton*, BOPA has declined to award such fees in unfair labor practice matters. *See e.g., Anaconda Pol. Prot. Assoc. v. Anaconda-Deer Lodge County*, ULP 2-2001; *McCarvel v. Teamsters Local 45*, ULP 24-77. Gundrum has cited no statute or rule that would permit this tribunal to award attorney's fees in a grievance proceeding. Accordingly, this tribunal has no power to do so.

As to the request that a policy be developed, the policy is in fact developed, is clear, and demonstrates that (1) management does not have to pay overtime except where a nonexempt employee actually works in excess of 40 hours per week and (2) that management has the prerogative to implement a flex time policy for nonexempt management employees. This is wholly consistent with the Fair Labor Standards Act and Montana overtime pay requirements. Nothing in the policy is unclear or suggests something to the contrary and there is no need for any type of clarification.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction of this case even though Gundrum left her employment after the Step 3 hearing in this matter.

2. The Board of Personnel Appeals has jurisdiction to consider MDT's rejection of the preliminary decision sustaining Gundrum's grievance regarding the 3.5 hours of overtime pay.

3. Gundrum has not been aggrieved in a serious matter of her employment due to her two-day suspension.

4. Gundrum has been aggrieved by MDT's failure to pay her for the 3.5 hours of overtime she claimed during the pay period ending May 4, 2012.

VI. RECOMMENDED ORDER

Based on the foregoing, the hearing officer recommends that Gundrum's grievance with respect to her suspension be denied and that her grievance with respect to the failure to pay her 3.5 hours of overtime be sustained.

DATED this 21st day of December, 2012.

BOARD OF PERSONNEL APPEALS

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.303(3)(c), this RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than January 14, 2013. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.303(3)(c), and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 201503
Helena, MT 59620-1503